

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY JS D.C.
05 DEC -5 AM 7:15

WILLIE MAE THOMAS,

Plaintiff,

v.

HQM OF MEMPHIS, LLC, d/b/a MEMPHIS
HEALTH CARE AND REHABILITATION
CENTER, et al.,

Defendants.

No. 05-2384 Ma/V

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W/D OF TN, MEMPHIS

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND

Before the court is Plaintiff Willie Mae Thomas' ("Thomas") Motion to Remand filed on October 31, 2005. Defendants HQM of Memphis, LLC, d/b/a Memphis Health Care and Rehabilitation Center ("the Center"), HCD License, LLC, d/b/a/ Sycamore View Care and Rehabilitation Center, and Sycamore Management Services, LLC, filed a response on November 8, 2005. For the following reasons, Thomas' motion is GRANTED.

On May 24, 2005, this case, a wrongful death action, was removed to this court from the Tennessee Circuit Court based on diversity of citizenship. Thomas is a citizen of Tennessee while the original defendants are all incorporated in Delaware, and the amount in controversy exceeds \$75,000. On November 29, 2005, Thomas amended his complaint to join Dr. Connie Holladay ("Dr.

Holladay") as a defendant. Dr. Holladay is a citizen of Tennessee, and therefore, Thomas moved for remand, arguing that the joinder of Dr. Holladay destroyed complete diversity of citizenship.

Defendants argue that remand is not appropriate because the proper time for determining whether a federal court has jurisdiction is the time of removal. Defendants, however, ignore the requirements of 28 U.S.C. § 1447(e), which states, "If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court."

The court allowed the complaint to be amended to add Dr. Holladay because, in its answer to Thomas' first amended complaint, the Center raised as an affirmative defense the doctrine of comparative fault, seeking to shift any liability it might face to Dr. Holladay. (Am. Answer 6-7, ¶ 7.) Because this court permitted Dr. Holladay to be joined, the court no longer has subject matter jurisdiction over this action. Therefore, Plaintiff's Motion to Remand is GRANTED.

So ordered this 2d day of December 2005.



SAMUEL H. MAYS, JR.

UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 18 in case 2:05-CV-02384 was distributed by fax, mail, or direct printing on December 8, 2005 to the parties listed.

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Honorable Samuel Mays
US DISTRICT COURT